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No. 87-1631

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,
v.
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
1. The Statutory Framework	2
2. The Proceedings Below	5
INTEREST OF AMICUS CURIAE	7
REASONS FOR GRANTING THE WRIT	11
A. There Is A Conflict of Decision by Two Courts of Appeals in Regard to an Important Issue	11
B. The Decision Below Raises Important Issues as to the Interpretation of Past Practices in Circumstances Where There Is No Applicable Written Collective Agreement	13
CONCLUSION	16

TABLE OF AUTHORITIES

Cases: Page

Andrews v. *Louisville & Nashville R. Co.*, 406 U.S. 320 (1972) 2
Bro. of Locomotive v. *Atchison, Topeka & Santa Fe*, 768 F.2d 914 (7th Cir. 1985) 4
Bro. of Maintenance v. *Burlington Northern R.*, 642 F. Supp. 41 (N.D. Iowa 1985) 5
Brotherhood of Maintenance v. *Burlington Northern*, 802 F.2d 1016 (8th Cir. 1986) 3, 5, 7, 11
Broth. of Loco. Eng. v. *Boston & Maine Corp.*, 788 F.2d 794 (1st Cir. 1986), *cert. denied*, 55 U.S.L.W. 3232 (1986) 3
Burlington Northern Railroad Co. v. *Brotherhood of Maintenance of Way Employes*, —— U.S. ——, 55 U.S.L.W. 4576 (1987) 3, 4
Elgin, J. & E. R. Co. v. *Burley*, 325 U.S. 711 (1945), on hearing, 327 U.S. 661 (1946) 2, 4, 5
Gunther v. *San Diego & A. E. R. Co.*, 382 U.S. 257 (1965) 15
Ind. Fed. of Flight Attendants v. *Trans World, Etc.*, 655 F.2d 155 (8th Cir. 1981) 4
Local 1477 United Transportation Union v. *Baker*, 482 F.2d 228 (6th Cir. 1973) 4
Locomotive Engineers v. *L.&N.R. Co.*, 373 U.S. 33 (1963) 2
Order of Conductors v. *Pitney*, 326 U.S. 561 (1946) 15
Railroad Trainmen v. *Terminal Co.*, 394 U.S. 369 (1969) 3
Railway Clerks v. *Florida E.C.R. Co.*, 384 U.S. 238 (1966) 3
Railway Labor Executives v. *Norfolk & Western Ry.*, 833 F.2d 700 (7th Cir. 1987) 3
Railway Labor Executives' Ass'n v. *Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. pet. pending*, No. 87-1555 ..... 7, 8, 9, 11
Railway Labor Executives' Association v. *Chicago and North Western Transportation Company*, Case No. 87-CV-60302AA (E.D. Mich.) 11

TABLE OF AUTHORITIES—Continued

	Page
Shore Line v. *Transportation Union*, 396 U.S. 142 (1969)	3, 14
Slocum v. *Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950)	12, 15
Southern Pacific Transportation Co. v. *Locomotive Engineers*, 96 Labor Cases ¶ 14,016 (N.D. Cal. 1980)	12
Trainmen v. *Chicago R. & I.R. Co.*, 406 U.S. 320 (1972)	2
Union Pacific R. Co. v. *Sheehan*, 439 U.S. 89 (1978)	2
Statutes:	
Federal Railroad Safety Act, 45 U.S.C. §§ 421 *et seq.*	6
Hours of Service Act, 45 U.S.C. §§ 61 *et seq.*	10
Railway Labor Act, 45 U.S.C.:	
§ 153 First (h)	2
§ 153 First (i)	2
§ 153 First (l)	2
§ 153 First (o)	3
§ 153 First (p)	2
§ 153 First (q)	2
§ 153 Second	2
§ 156	3
§ 181 *et seq.*	12
Miscellaneous:	
49 C.F.R. Part 219	6, 7, 10

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BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

The National Railway Labor Conference represents most of the nation's Class I railroads in national collective bargaining and in regard to various other matters involving the Railway Labor Act. Because this case presents issues concerning the application of that Act that are of large importance to the railroad industry, this *amicus* brief is being filed with the written consent of the parties pursuant to Supreme Court Rule 36.1.

STATEMENT OF THE CASE

1. *The Statutory Framework.* This case arises under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.* Under § 3 First (i) of that Act, "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" may be submitted by either party to the National Railroad Adjustment Board ("NRAB") if the dispute is not adjusted through the grievance procedures established by the carrier. 45 U.S.C. § 153 First (i).[1] Such disputes commonly are referred to as "minor" disputes, in accordance with terminology adopted by this Court in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945), on rehearing, 327 U.S. 661 (1946). The arbitration remedy thus provided for minor disputes is mandatory and exclusive. The courts do not have jurisdiction to decide such a dispute,[2] and a union may not lawfully strike over such a dispute, either before or after the decision of the adjustment

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[1] The NRAB is composed of four divisions, each of which has a membership divided equally between those "selected by the carriers" and by "the national labor organizations of the employees." 45 U.S.C. § 153 First (h). In the event of a deadlock, a neutral "referee" agreed upon by the members of the division or appointed by the National Mediation Board sits with the division so as to make an award. 45 U.S.C. § 153 First (l). The "findings and order of the divison" are "conclusive on the parties," subject to limited judicial review on grounds specified in 45 U.S.C. §§ 151 First (p) and (q). See, *e.g.*, *Union Pacific R. Co.* v. *Sheehan*, 439 U.S. 89 (1978). A carrier and a union also may establish special boards of adjustment, or so-called "Public Law Boards," to decide such disputes in lieu of the NRAB. 45 U.S.C. § 153 Second. Those alternate adjustment boards generally consist of a carrier member, a union member, and a neutral member designated by the National Mediation Board.

[2] See, *e.g.*, *Andrews* v. *Louisville & Nashville R. Co.*, 406 U.S. 320 (1972).

board.[3] A carrier ordinarily may implement its interpretation prior to the decision of the adjustment board,[4] but if found to be wrong, the "Board shall make an order, directed to the carrier, to make the award effective" which may include reinstatement and "a requirement for the payment of money" to compensate the employee for lost wages or other monetary loss caused by the carrier's action found to be erroneous. 45 U.S.C. § 153 First (o).

Such minor disputes are to be contrasted with so-called "major" disputes in which a party to a collective bargaining agreement seeks to change that agreement. Section 6 of the RLA requires a carrier or union to give "written notice of an intended change in agreements affecting rates of pay, rules, or working conditions," 45 U.S.C. § 156, and the Act further provides for conferences, mediation by the National Mediation Board and, at the discretion of the President, investigation of the dispute and recommendations for a settlement by an emergency board. See, *e.g.*, *Railroad Trainmen* v. *Terminal Co.*, 394 U.S. 369, 378 (1969). Those procedures have been characterized by this Court as "long and drawn out," *Railway Clerks* v. *Florida E.C.R. Co.*, 384 U.S. 238, 246 (1966), as "almost interminable," *Shore Line* v. *Transportation Union*, 396 U.S. 142, 149 (1969), and as "virtually endless," *Burlington Northern Railroad Co.* v. *Brotherhood of Maintenance of Way Employes*, —— U.S. ——, 55 U.S.L.W. 4576, 4580 (1987). While a major dispute is working its way through those procedures the parties are required to maintain the *status quo*, *Shore Line*, *supra*. But once they are exhausted without

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[3] See, *e.g.*, *Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30 (1957) (before); *Locomotive Engrs.* v. *L. & N. R. Co.*, 373 U.S. 33 (1963) (after).

[4] See, e.g., *Railway Labor Executives* v. *Norfolk & Western Ry.*, 833 F.2d 700, 708 (7th Cir. 1987); *Brotherhood of Maintenance* v. *Burlington Northern*, 802 F.2d 1016, 1021-1022 (8th Cir. 1986); *Broth. of Loco. Eng.* v. *Boston & Maine Corp.*, 788 F.2d 794, 797 n.1 (1st Cir. 1986), *cert. denied*, 55 U.S.L.W. 3232 (1986).

agreement being reached, the parties may resort to self help including a strike of the carrier involved in the dispute and secondary picketing of any or all other railroads, *Burlington Northern, supra.*

Although the foregoing principles are well established by many decisions in addition to those cited, it is often necessary for a court to decide whether a particular dispute is major or minor in nature. Such litigation usually arises—as here— when a railroad claims that its actions accord with existing agreements so as to give rise to a minor dispute while a union contends that the carrier is attempting to impose unilaterally a new working condition, and thus to change its existing agreements, so as to give rise to a major dispute. "Confronted by such opposing characterizations of particular disputes, the courts of appeals have consistently ruled that if the disputed action of one of the parties can 'arguably' be justified by the existing agreement, or, in somewhat different statement, if the contention that the labor contract sanctions the disputed action is not 'obviously insubstantial,' the controversy is within the exclusive province of the National Railroad Adjustment Board." *Local 1477 United Transportation Union* v. *Baker*, 482 F.2d 228, 230 (6th Cir. 1973). The "burden on the carrier to show such arguable justification is 'relatively light,'" *Ind. Fed. of Flight Attendants* v. *Trans World, Etc.*, 655 F.2d 155, 159 (8th Cir. 1981), and "when in doubt, the courts construe disputes as minor." *Bro. of Locomotive* v. *Atchison, Topeka & Santa Fe*, 768 F.2d 914, 920 (7th Cir. 1985).

The foregoing principles are applicable to disputes about a carrier's actions in regard to a matter as to which its written agreements are silent—referred to by this Court in *Elgin, J. & E. R. Co.* v. *Burley* as an "omitted case," 325 U.S. at 723—the situation that is involved here. We note, however, that the reasons for the general presumption in favor of arbitration—and thus for classfying a dispute as minor rather than major—

are particularly strong and fully justify the Court's reference in *Elgin, J. & E. R. Co.* v. *Burley* to an omitted case as one type of minor disputes for an adjustment board to decide, 325 U.S. at 723. See pp. 15-16 *infra*.

2. *The Proceedings Below.* Petitioner, Burlington Northern Railroad Company ("BN"), has an operating and safety rule denominated Rule G. It prohibits the use or possession by an employee of drugs or alcohol while on duty or on company property, and the reporting to duty by an employee while under the influence of drugs or alcohol. Pet. App. 74a-75a, 82a. Rule G was adopted many years ago and from time-to-time has been revised unilaterally by BN, it applies to all BN employees regardless of their union representative, and it has never been a part of a written collective agreement. Pet. App. at 75a, 82a-83a. Rule G does not prescribe or proscribe any particular means of detecting violations. BN introduced evidence that it historically has "used various means and procedures to enforce Rule G," which "always have been unilaterally promulgated by the carrier." Pet. App. at 82a-83a. Pursuant to that past practice, at least since 1978, the BN had utilized "post-accident testing including the use of urine, blood or breath test," without objection from Respondent, Brotherhood of Locomotive Engineers ("BLE"). *Ibid.*

In 1984, following two catastrophic train accidents, BN intensified its program for enforcing Rule G. Post-accident urine testing of employees may be required following major and certain minor human-factor accidents or when a BN supervisory official detects abnormal behavior on the part of an employee. Pet. App. at 75a, 77a-78a, 83a. The parties stipulated that this "post-accident testing policy applies only when there is a causal connection between the accident and an employee's responsibility for the accident," and "is not required when the cause of the accident is clearly related to other than employee error . . . ." Pet. App. at 78a.

Two unions representing BN employees objected to this intensified program for detecting violations of Rule G and brought litigation to enjoin its implementation: the Brotherhood of Maintenance of Way Employes ("BMWE"), which represents employees that maintain the BN's tracks, and the BLE, which represents BN's locomotive engineers. In the litigation brought by the BMWE, a district court held that its objections gave rise to a minor dispute for an adjustment board to decide and thus refused to enjoin implementation of the program in regard to employees represented by that union.[5] The Eighth Circuit unanimously affirmed that aspect of the district court's decision. *Brotherhood of Maintenance* v. *Burlington Northern*, 802 F.2d 1016, 1020-1023 (1986). In the litigation brought by the BLE, the district court similarly held that its objections gave rise to a minor dispute and refused to enjoin implementation of the program as to employees represented by that union.[6] In the decision now before this Court, however, the Ninth Circuit reversed over a dissent by Judge Alarcon. Pet. App. at 1a-31a, reported as *Broth. of Locomotive Eng.* v. *Burlington Northern*, 838 F.2d 1087 (1988).

The same panel of the Ninth Circuit on the same day by the same 2-1 majority also held that regulations issued by the Federal Railroad Administration ("FRA"), pursuant to the Federal Railroad Safety Act (45 U.S.C. §§ 421 *et seq.*), violate the Fourth Amendment to the Constitution insofar as they require that covered railroad employees undergo alcohol and drug testing (including urinalysis) if involved in major train accidents, certain impact accidents, or fatal incidents (49 C.F.R.

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[5] *Bro. of Maintenance* v. *Burlington Northern R.*, 642 F. Supp. 41, 46-48 (N.D. Iowa 1985).

[6] Pet. App. at 33a-35a, reported as *Brotherhood of Locomotive Eng.* v. *Burlington Northern*, 620 F. Supp. 173 (D. Mont. 1985).

§ 219.201(a)); or authorize the railroads to require such testing of employees involved in certain other reportable train accidents, incidents, or certain operating rule violations (49 C.F.R. §§ 219.301). *Railway Labor Executives' Ass'n* v. *Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. pet. pending*, No. 87-1555.

In the instant case, that panel majority did not see fit even to mention the earlier decision by the Eighth Circuit in the *BMWE* case holding that the identical BN post-accident testing program in connection with the identical Rule G is at least arguably justified by the BN's past practices in enforcing Rule G so that the BMWE's objections thereto gave rise to a minor dispute for an adjustment board to decide. Although recognizing that the dispute is minor if the BN's testing program "is 'arguably justified' by . . . a term implied by past practice" (Pet. App. at 9a), the panel majority minimized BN's past practice of unilaterally enforcing Rule G, and relied almost entirely upon its *Burnley* decision for its holding that the BN did not have even arguable justification for that program. In its view, "the focus of our inquiry—both under the fourth amendment and under an implied provision of a collective agreement—is the expectation of privacy of those who will be subject to urine testing." Pet. App. at 11a. It held, apparently as a matter of law, that "[a]lthough the source of the invasion is different, the privacy interest is the same," and "decline[d] to assume that BLE members implicitly granted BN the authority to invade their privacy in ways the government could not." *Ibid.*[7]

INTEREST OF AMICUS CURIAE

The National Railway Labor Conference ("NRLC") is an unincorporated association that includes almost all of the nation's class I railroads among its members.

[7] The court below further noted that its *Burnley* decision obviated arguments by the BN that the FRA regulations also provided support for its drug testing program. Pet. App. at 12a.

They employ over 90% of all railroad employees. Those members include the National Railroad Passenger Corporation (Amtrak), which provides intercity passenger service (for the most part over track maintained by other railroads and used also for freight operation). Other members (including BN) provide commuter as well as freight service, and most are solely freight railroads (although Amtrak passenger trains may operate over some of their tracks). NRLC represents member railroads in multi-employer collective bargaining with unions representing their employees (including the BLE), and in regard to a variety of other labor-management relations matters of interest to the railroads generally.[8]

This case involves an issue of critical importance to the railroad industry: whether a railroad that historically has enforced unilaterally safety rules prohibiting employees' on-duty alcohol and drug impairment can implement more effective detection measures without precipitating a major dispute under the RLA. There can be no question about the importance of railroad safety, or about the importance to railroad safety of preventing on-duty alcohol and drug impairment of employees operating trains or maintaining railroad equipment and tracks. Those matters obviously are highly important to the railroads as well as to railroad employees, passengers, shippers and members of the general public who may be affected by railroad accidents. And, of course, the prevention of on-duty alcohol and drug impairment by other employees also is important to the railroads.

As the record in this case reveals, Rule G for many years has "existed throughout the railroad industry"

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[8] Among other things, the Association of American Railroads generally represents the railroad industry in FRA matters, as in the *Burnley* case, while NRLC generally performs that role in matters related to collective bargaining or labor-management relations, as in this case.

(Pet. App. at 82a), and "BN's post-accident testing program is similar to programs being conducted on other railroads" (Pet. App. at 83a). The enforcement of Rule G has been the railroads' main line of defense against on-duty alcohol or drug impairment. The means or methods of enforcement traditionally has been left to the unilateral discretion of management, on other railroads as well as on BN.[2] Thus, the railroads have been able to adapt those means or methods of enforcement from time-to-time in the light of the seriousness of the problem and/or technological developments such as improved testing methods or techniques, without previously invoking the "almost interminable" major dispute procedures of the RLA in an effort to reach agreement with the unions —which in any event could lead to strikes if no agreement is reached.

The decision below threatens to interfere with that desirable flexibility of approach in enforcing Rule G, and for that reason, among others, its reversal is important to the NRLC and member railroads in addition to the BN. The importance of that decision transcends whatever this Court may do with the *Burnley* case, and thus the instant petition should be granted whether the petition in that case is granted or denied. Even if this Court should review and reverse the *Burnley* decision, as NRLC believes should be done, that will neither suffice to contain the railroads' problems with alcohol and drug impairment nor correct the Ninth Circuit's erroneous interpretation of the RLA.

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[2] As on the BN, the carriers generally have determined unilaterally the manner in which Rule G is to be enforced. CSX Transportation ("CSXT"), however, has entered into agreements for drug and alcohol testing with several of its unions and does not intend unilaterally to impose such testing. CSXT is concerned with preserving a carrier's right unilaterally to promulgate changes in Rule G and other operating rules.

Rule G applies to all employees while the FRA regulations cover only employees who perform service subject to the Hours of Service Act (45 U.S.C. §§ 61 *et seq.*). 49 C.F.R. § 219.5(d) and (e).[10] The FRA regulations prescribe "minimum Federal safety standards for control of alcohol and drug use," with respect to covered employees, and expressly do not "restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with" those regulation. 49 C.F.R. § 219.1(b). In our view, enforcement of Rule G is not limited by Fourth Amendment doctrines, and thus can be more flexible and responsive to general as well as to particular problems and to conditions that exist on the particular carrier. Indeed, the Ninth Circuit's holding that the "focus of . . . inquiry" is the same under the Fourth Amendment and under the RLA is in itself a very important issue. The adoption of safety regulations by the FRA is a time-consuming process, and those regulations are drafted for application to all railroads. Unless hampered by the decision below in this case, an individual railroad under the RLA may tailor its enforcement of Rule G to the severity of its problems with alcohol or drug impairment without substantial delay. If an improved means of detecting employees under the influence of drugs should be developed, for example, the decision below could substantially delay the use of that new means by a railroad pending exhaustion of the long and drawn out major dispute procedures of the RLA.

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[10] This includes employees "actually engaged in or connected with the movement of any train," 45 U.S.C. § 61(b)(2), dispatchers and other employees participating in the transmission of orders affecting train movements, 45 U.S.C. § 63(a), and employees "engaged in installing, repairing or maintaining signal systems." 45 U.S.C. § 64(d). It does not include, among others, maintenance of way employees who primarily maintain railroad tracks and mechanical employees who primarily maintain or repair locomotives, cars or other railroad equipment (apart from signal equipment).

In short, it is in the interest of the NRLC and member railroads to urge this Court to grant the petition and reverse the decision below, regardless of what this Court may do in the *Burnley* case.

REASONS FOR GRANTING THE WRIT

The decision below squarely conflicts with a decision by the Eighth Circuit in regard to an important issue, and the Ninth Circuit has wrongly decided that issue in a manner that also raises important questions about the application of the RLA in circumstances where there is no express provision either authorizing or prohibiting a railroad's disputed actions in any applicable written collective bargaining agreement.

A. There Is A Conflict of Decision by Two Courts of Appeals in Regard to an Important Issue.

As Judge Alarcon stated in dissent to the decision below (Pet. App. at 13a), the "majority's opinion is contrary to the Eighth Circuit's well-reasoned analysis of precisely the same issue" in the *BMWE* case (see p. 6 *supra*); apart from the identity of the union challenging the BN's post-accident testing program, "the facts and legal questions are identical," so that the "majority's opinion creates an intercircuit conflict." Those decisions address a recurring issue. For example, the Chicago and North Western has adopted a post-accident testing program similar to the BN program at issue here. All the major rail labor unions, including BLE and BMWE, have sued to enjoin that program. *Railway Labor Executives' Association* v. *Chicago and North Western Transportation Company*, Case No. 87-CV-60302AA (E.D. Mich.), which is now pending.[11]

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[11] The BN has cited a number of district court decisions which reached conflicting decisions in regard to an air or rail carrier's unilateral adoption of new alcohol or drug tests. Pet. at 14-16. See, also, *Southern Pacific Transportation Co.* v. *Locomotive Engineers*,

We have shown (pp. 8-10 *supra*) that the enforcement of Rule G is important to the safety and efficiency of railroad operations, which in turn is important to railroad passengers, shippers, employees and to the general public as well as to the railroads. Moreover, resolution by this Court of that intercircuit conflict has an additional importance. Most major railroads operate in more than one circuit, and separate crafts or classes of their employees generally have separate union representation. The existence of conflicting lines of authority in the lower courts not only will invite litigation, but could also result—as already has happened to the BN—in the same program for enforcing the same Rule G by the same railroad being enjoined in one circuit as to one union but not in another circuit as to another union. Permissible techniques for detecting possible on-duty alcohol or drug impairment could vary in regard to different crew members involved in the same human-factor accident, for example, depending upon which union is an employee's representative.

One of the advantages of having such controversies decided by the NRAB, as would be done under the Eighth Circuit's decision, is that "[p]recedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity . . . throughout the nation's railway system." *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239, 243 (1950). Now, only this Court can assure that 'desirable degree of uniformity" by resolving the conflict created by the Ninth Circuit, reversing the decision below, and ruling that such disputes over the implications of past practices in enforcing Rule G are arbitrable by the NRAB. Thus, review of that decision obviously is important to the future application of the RLA to other railroads and rail-

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96 Labor Cases ¶ 14,016 (N.D. Cal. 1980), which held that the BLE's objections to the railroad's unilateral use of intoxilyzer tests to detect violations of Rule G created a minor dispute.

road unions as well as to the BN and the BLE. In addition, the same kind of issues can arise in regard to the airlines and their unions that also are subject to the RLA. 45 U.S.C. §§ 181 *et seq.*

B. The Decision Below Raises Important Issues as to the Interpretation of Past Practices in Circumstances Where There Is No Applicable Written Collective Agreement.

Both Rule G and the means for enforcing that rule heretofore have been established by the BN unilaterally, and are not part of an express collective bargaining agreement with the BLE or any other union. We do not quarrel with the majority opinion below, however, insofar as it pointed out that a "railroad collective agreement includes not only express terms, but terms implied by past practice and by law" (Pet. App. at 8a), and acknowledged that the "arguably justifiable" test is applied by the courts in separating minor from major disputes regarding the implications of past practice as well as in other circumstances (Pet. App. at 9a). But as Judge Alarcon stated in dissent (Pet. App. at 13a), after "correctly stating the applicable test, the majority proceed[ed] to ignore it."

The court below should have focussed upon the record evidence of BN's past practices in enforcing Rule G, including evidence that historically that Rule has been enforced by various means deemed appropriate by the carrier. If that had been done, that Court should have concluded, as did the Eighth Circuit, that this evidence at least arguably supports BN's contention that its more effective enforcement measures are permissible under an implied term in its agreements with the union and therefore sent the matter to arbitration as a minor dispute under the RLA. Instead, the majority below focussed its inquiry, not on whether BN's arguments from past practice were too frivolous or insubstantial even to merit

consideration by an adjustment board, but rather upon "the expectation of privacy of those who will be subject to urine testing." We assume that such a "focus" to some extent may be appropriate "under the fourth amendment," but there is no support whatever of which we are aware for the proposition that it is equally appropriate in applying the "arguably justifiable" test in regard to 'an implied provision of a collective agreement . . . ." See Pet. App. at 11a.[12]

The majority below acknowledged that "BN is not a government agency and, therefore, is not subject to the restrictions of the fourth amendment." Pet. App. at 11a. But the majority utilized its focus on the privacy interests of employees so as in effect to apply the restrictions of the Fourth Amendment to the private actions of the BN. It did so by issuing the *ipse dixit* that the "privacy interest is the same" regardless of whether measured by an employee's "expectations regarding whether the government may invade his or her privacy" or "whether an employer may engage in a similar invasion of privacy . . . ." Pet. App. at 11a. Hence, the majority below "decline[d] to assume that BLE members implicitly granted BN authority to invade their privacy in ways the government could not." *Ibid.* Insofar as appears, the majority did not even consider whether that bold proposition is at least "arguably" wrong. The majority cited no facts and no authority for thus equating an employee's expectations of privacy in dealing with his employer with his expectations of privacy in dealing with his government.

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[12] The court below cited *Shore Line* v. *Transportation Union, supra,* 396 U.S. at 153, for the proposition that "the terms of a collective agreement include 'actual, objective working conditions and practices, broadly conceived . . . .,' " but nothing in that proposition (or elsewhere in the *Shore Line* decision) either holds or suggests that a court should focus on employees' "expectation of privacy" in determining what those working conditions may be.

We do not believe and the record does not establish that the usual railroad worker (or union leader, or supervisor, or labor-relations officer) has an informed understanding of Fourth Amendment jurisprudence, or the same expectation of privacy *vis-a-vis* his or her employer as compared to governmental bodies. In short, we think that the Ninth Circuit's perceptions in regard to the privacy interests of railroad workers are unrealistic, as well as improperly embroiling the interpretation of past practices in the railroad industry with the complexities and permutations of Fourth Amendment jurisprudence.

But however that may be, this points up the fundamental error of the decision below—the usurpation by the court of the jurisdiction of the NRAB. The Congress in providing for arbitration of minor disputes "intended to leave a minimum of responsibility to the courts," for the very reason, among others, that the interpretation of collective agreements often requires consideration of "usage, practice and custom" which "must be taken into account and properly understood." *Order of Conductors* v. *Pitney*, 326 U.S. 561, 566, 567 (1946). The NRAB was created as "an agency especially competent" to deal with such issues. *Id.* at 567. "Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications." *Slocum* v. *Delaware, L. & W. R. Co.*, *supra*, 339 U.S. at 243. Its members include "representatives of management and labor . . . peculiarly familiar with the thorny problems and the whole range of grievances that constantly exist in the railroad world," as they are "in daily contact with workers and employers, and know[] the industry's language, customs, and practices." *Gunther* v. *San Diego & A. E. R. Co.*, 382 U.S. 257, 261 (1965).

Hence, the decision below establishes a precedent for avoiding the jurisdiction of the NRAB in the very area where its special competence is most important—where

there is no written agreement and decision turns altogether upon the implications to be drawn from custom and practice, including any relevant perception of the privacy expectations of railroad workers. That precedent, if allowed to stand, undermines the role that the Congress intended the NRAB to perform in regard to resolving a wide range of railroad labor-management controversies in addition to controversies over the enforcement of Rule G. The decision below, therefore, is of general importance to the operation of the RLA and should be reviewed by this Court.

CONCLUSION

For the reasons stated above and in the BN's Petition, this Court should grant a writ of certiorari and review the decision by the Ninth Circuit.

Respectfully submitted,

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